

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

BARBARA LYNN CHAVEZ,

Petitioner,

v.

GLORIA HENRY, WARDEN,

Respondent.

CV F 05-00490 OWW DLB HC

ORDER DENYING PETITIONER'S MOTION
FOR CERTIFICATE OF APPEALABILITY

[Doc. 36]

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On January 11, 2007, the petition for writ of habeas corpus was dismissed and judgment was entered. (Court Docs. 31, 32.)

When a district court denies a habeas petition on procedural grounds without reaching the underlying constitutional claims, the petitioner must show, in order to obtain a certificate of appealability: (1) that jurists of reason would find it debatable whether the petition stated a valid claim of a denial of a constitutional right; and (2) that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. Slack v. McDaniel, 529 U.S. 473, 484 (2000). While both showings must be made to obtain a certificate of appealability, "a court may find that it can dispose of the application in a fair and prompt manner if it proceeds first to resolve the issue whose answer is more apparent from the record and arguments." Slack, 529 U.S. at 485.

1 The Court finds that Petitioner has failed to make an adequate showing. The Court does
2 not find that jurists of reason would not find it debatable whether the petition was properly
3 dismissed as untimeliness. Petitioner has not made the required substantial showing of the denial
of a constitutional right. Accordingly, the Court hereby DENIES Petitioner's motion for
certificate of appealability.IT IS SO ORDERED.

4 **Dated: February 7, 2007**
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/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE